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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,718	09/26/2003	Imran Ahmed	END920030095US1	1116
30449 7590 04/01/2009 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110				
EXAMINER				
STRANGE, AARON N				
ART UNIT		PAPER NUMBER		
2448				
MAIL DATE		DELIVERY MODE		
04/01/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/672,718

**Applicant(s)**

AHMED ET AL.

**Examiner**

AARON STRANGE

**Art Unit**

2453

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-50, 55, 56 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-50, 55, 56 and 59-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments, see pp. 16-18 of the remarks filed 1/13/09, with respect to the rejection of claims 26-50, 55, 56 and 59-64 have been fully considered and are persuasive. The rejection of those claims has been withdrawn. However, upon review of the specification, there does not appear to be support for the claim amendments under 35 U.S.C. § 112, first paragraph, and a new rejection under those grounds has been set forth below.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26-50, 55, 56 and 59-64 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. With regard to claim 26, the limitation "wherein there is no coinciding path segment among the separate communication channels between the control server and

each server of the at least two servers in each cluster” is not described by the specification. Applicant points to Fig.1 in support of the amendments to claim 26 (Remarks 13). Fig. 1 shows a control server connected to two servers in each cluster via dashed lines 31-39. The specification describes elements 31-19 as “communication channels” (p.10, ll. 1-2) and further describes the communication channels as “any known communication channel such as, *inter alia*, the Internet, an intranet, cable, telephone wiring, hard wiring such as within a computer system, optical fibers, etc.” (p. 10, ll. 2-5). However, the specification fails to describe an embodiment where that are no coinciding path segments shared by any of the communication channels.

5. Claim 28 contains a similar limitation and is rejected under the same rationale.
6. All claims not individually rejected are rejected by virtue of their dependency from the above claims.
7. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
8. Claims 26-50, 55, 56 and 59-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. With regard to claim 26, the limitation "said control server being directly linked to each server of at least two servers in each cluster" is unclear. It is unclear if Applicant intends for the control server to connect to each server in a cluster containing two servers or only two servers in a cluster that may contain two or more servers, or each server in a cluster that may contain two or more servers.

Based on the specification of the present application, it appears that Applicant intends for each cluster to contain *at least* two servers with the control server directly connected to each server in each cluster, regardless of the number of servers in the cluster (i.e., in a cluster with three servers, the control server is connected to each of them). The claim has been interpreted in this manner for the purpose of applying prior art.

The Examiner recommends amending the claim to clarify the arrangement of the connections between the control server and the servers in each cluster. The Examiner would like to express willingness to conduct an interview to assist in the identification of mutually acceptable claim language. If Applicant feels that an interview would be beneficial, he/she is encouraged to contact the Examiner to schedule one.

10. Claim 28 contains a similar limitation and is rejected under the same rationale.

11. All claims not individually rejected are rejected by virtue of their dependency from the above claims.

***Claim Rejections - 35 USC §§ 102 & 103***

12. All rejections based on the prior art of record have been withdrawn.

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON STRANGE whose telephone number is (571)272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Strange/  
Examiner, Art Unit 2453